

TCEQ DOCKET NO. 2004-0049-AIR

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APPLICATION OF ASARCO INCORPORATED TO RENEW AIR QUALITY PERMIT NO. 20345	§ § §	BEFORE THE CHIEF CLERKS OFFICE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**EXECUTIVE DIRECTOR'S AGENDA BRIEF**

BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) and files this his Agenda Brief regarding consideration of the renewal of Air Quality permit number 20345 and in support thereof would show the following:

**I. INTRODUCTION.**

Asarco Incorporated (ASARCO) has applied to the TCEQ to renew its air quality permit number 20345. The procedural history is generally familiar to all the parties and includes the following highlights: the State Office of Administrative Hearings (SOAH) conducted an evidentiary hearing on July 11-22, 2005; Administrative Law Judges' (ALJ) issued the proposal for decision (PFD) on October 27, 2005; Commission considered the PFD on February 8, 2006; Commission issued its Interim Order on March 10, 2006; ED's Report filed on May 1, 2007; and ED's Response to Comment on the Report filed on July 27, 2007. The purpose of this pleading is to provide the ED's framework of the issues for consideration and the appropriate scope of review.

**II. APPLICABLE LAW.**

The Texas Clean Air Act (Act) sets forth the Legislative policy of the state and purpose of the Act as follows:

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(T)o safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.<sup>1</sup>

This statutory policy establishes the context for the deliberation on the renewal of air quality permits under the Act.<sup>2</sup>

Section 382.055 of the Act provides for the renewal of permits, the establishment of rules,<sup>3</sup> and the requirements and process for renewals. In considering the renewal, the statute requires the commission to consider:

- the performance of the owner or operator of the facility according to the [compliance history statute];<sup>4</sup> and
- the condition and effectiveness of existing emission control equipment and practices.<sup>5</sup>

Once the commission has made an adverse finding pursuant to section 382.055(d), the statute requires the commission to: 1) set out in a report the basis for the commission's determination; and 2) establish a schedule that includes a final date for meeting commission requirements as expeditiously as possible.<sup>6</sup>

Finally, in issuing the renewal the Commission:

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<sup>1</sup> TEX. HEALTH & SAFETY CODE § 382.002(a).

<sup>2</sup> See TEX. HEALTH & SAFETY CODE § 382.0518 and 382.055.

<sup>3</sup> 30 TEX. ADMIN. CODE ch. 116, subch. D.

<sup>4</sup> The commission's current compliance history program in Texas Water Code ch. 5, subch. Q, is not applicable to this renewal. The applicable standards are found in former Tex. Health & Safety Code §§ 382.055(d)(1).

<sup>5</sup> TEX. HEALTH & SAFETY CODE § 382.055(d).

<sup>6</sup> TEX. HEALTH & SAFETY CODE § 382.055(f).

- shall impose as a condition for renewal of a preconstruction permit only those requirements the commission determines to be economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area; and
- may not impose requirements more stringent than those of the existing permit unless the commission determines that the requirements are necessary to avoid
  - a condition of air pollution; or
  - to ensure compliance with otherwise applicable federal or state air quality control requirements.<sup>7</sup>

Therefore, the Texas Clean Air Act establishes the framework for consideration of the issues relevant to the renewal of permit number 20345.

### III. ISSUES FOR CONSIDERATION.

In its March 10, 2006 Order, the Commission: determined ASARCO failed to demonstrate the effectiveness of its existing emission control equipment and practices as provided in Tex. Health and Safety Code § 382.055;<sup>8</sup> required current modeling as well as an investigation for purposes of Tex. Health & Safety Code §§ 382.055(d)(2) and (e);<sup>9</sup> and, pursuant to Tex. Health & Safety Code § 382.055(f) and(g) required issuance of a

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<sup>7</sup> TEX. HEALTH & SAFETY CODE § 382.055(e).

<sup>8</sup> Commission Interim Order, March 10, 2006, Attachment A.

<sup>9</sup> Commission Interim Order, March 10, 2006. The Commission also required an examination of the equipment and facilities on site to determine if a renewal application was appropriate, or if instead, a permit amendment was required. The ED concluded that only a permit renewal is required.

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report on and schedule for additional requirements prior to a Commission decision denying a permit renewal application.<sup>10</sup>

For the reasons stated above, the issues before the commission regarding the renewal of permit number 20345 are:

- Whether the ED's Report is complete and meets the requirements of Commission Interim Order dated March 10, 2006;
- Whether the technical requirements and permit conditions set forth in the ED's Report and schedule address the effectiveness of ASARCO's existing emission control equipment and practices, and the compliance history of ASARCO; and
- Whether the technical requirements are economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area.

**IV. CONCLUSION.**

As stated in his May 1, 2007 Report, the ED determined that ASARCO will not meet the requirements for renewing its permit and did not recommend issuance given certain deficiencies in ASARCO's air quality control equipment. As required by Tex. Health & Safety Code § 382.055(f)(1) and (2), the ED identified those deficiencies and a schedule for ASARCO to comply with in addressing those deficiencies. The ED, therefore, recommends the commission adopt the May 1, 2007 ED's Report, including

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<sup>10</sup> Commission Interim Order, March 10, 2006.

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the schedule of technical requirements, and the July 27, 2007 Response to Comments.<sup>11</sup>

And, as set forth in the statute, if the applicant meets the commission's requirements in accordance with the schedule, the commission shall renew the permit.<sup>12</sup>

Respectfully submitted,

Texas Commission on Environmental Quality

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Executive Director

Stephanie Bergeron Perdue, Deputy Director  
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<sup>11</sup> Response to Comments as required by the March 10, 2006 Interim Order.

<sup>12</sup> Tex. Health & Safety Code § 382.055(g).

CERTIFICATE OF SERVICE

On this 25th day of January, 2007, a true and correct copy of the foregoing instrument and the listed attachments was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, or hand delivery.



Booker Harrison

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
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CHIEF CLERKS OFFICE

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